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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,350	02/08/2002	Michael J. Corey		2604

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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

EXAMINER

LEARY, LOUISE N

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,350

Applicant(s)

COREY ET AL.

Examiner

Louise N. Leary

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-20 is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☒ Claim(s) 10-13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9-16-2002</u> . | 6) <input type="checkbox"/> Other: ____ |

1. Claims 1-20 are pending in this application.
2. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Correction is required to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- I. Claims 1-9 are rejected under 35 U.S.C. 102(a) as being anticipated by Corey et al (J. Immuno. Methods; V. 207(1);pp. 43-51; Aug 22,1997).

Corey et al disclose a luminometric assay for measuring cell death or membrane damage in a sample. Corey et al specifically disclose "The assay measures the release of glyceraldehydes-3-phosphate dehydrogenase (G3PDH) from dead or damaged cells by coupling its enzymatic activity to production of ATP, which in turn is measured by

well-known methods involving firefly luciferase. This is accomplished by means of a reaction series in which the activity of G3PDH is coupled with that of phosphoglycerate kinase, the next enzyme in the glycolytic pathway." See the abstract. In addition, Corey et al discloses the use of Nonidet P-40 as a detergent in the assay. See the entire document.

II. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Corey et al (J. Immuno. Methods; V. 207(1);pp. 43-51; Aug 22,1997).

Corey et al disclose a luminometric assay for measuring cell death or membrane damage in a sample. Corey et al specifically disclose "The assay measures the release of glyceraldehydes-3-phosphate dehydrogenase (G3PDH) from dead or damaged cells by coupling its enzymatic activity to production of ATP, which in turn is measured by well-known methods involving firefly luciferase. This is accomplished by means of a reaction series in which the activity of G3PDH is coupled with that of phosphoglycerate kinase, the next enzyme in the glycolytic pathway." See the abstract. In addition, Corey et al discloses the use of Nonidet P-40 as a detergent in the assay. See the entire document.

4. Claim 10-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


5. Claims 14-20 are allowable over the prior art of record.

6. Anderson et al (US Patent No. 6,653,094) has been cited to further show the state of this art.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louise N. Leary whose telephone number is (703) 308-3533. The examiner can normally be reached on Monday to Friday from 10 to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


LOUISE N. LEARY
PRIMARY EXAMINER

January 31, 2004